

ZONING HEARING BOARD OF UPPER MERION TOWNSHIP

APPLICATION NO. 2012-013	:	HEARING DATE: November 21, 2012
	:	December 19, 2012
	:	
APPLICATION OF:	:	
John and Betty Jane Miraglia	:	
	:	
	:	DECISION DATE: December 19, 2012
PROPERTY:	:	
360 Brownlie Road	:	
King of Prussia, PA 19406	:	

**OPINION AND ORDER OF THE UPPER MERION
TOWNSHIP ZONING HEARING BOARD**

The Applicant, John and Betty Jane Miraglia (hereinafter collectively referred to as the “Applicant”), filed an application requesting a variance to Section 165-23. The application was properly advertised, and public hearings were held before the Upper Merion Township Zoning Hearing Board on November 21, 2012 and December 19, 2012 at the Upper Merion Township Building.

All members of the Zoning Hearing Board were present except Member Lynne Gold-Bikin, as well as the Solicitor, Zoning Officer, and Court Reporter.

FINDINGS OF FACT

1. The Applicant is John and Betty Jane Miraglia, with a mailing address of 360 Brownlie Road, King of Prussia, PA 19406.
2. The Applicant is the legal owner of the subject property.
3. The property is located at 360 Brownlie Road, King of Prussia, PA 19406.

4. The applicant was represented by Sean Cullen, Esquire.
5. The subject property is located in the “R-2” zoning district.
6. The property is an irregularly shaped lot with lot lines that are not perpendicular to each other.
7. The topography of the property is uneven with varying elevations.
8. The Applicant requests a variance to locate a 20x20 shed in the front yard of the property. The purpose of the building is to store personal property. It is proposed to be 21 feet in height.
9. The only utility to the building is electricity.
10. The Applicant requires relief in the form of a variance from Section 165-23 of the Code in order to locate an accessory structure within the front yard instead of the rear quarter of the lot.
11. The Applicant also requires relief in the form of a variance to exceed the allowable building height for an accessory structure. The allowable height in accordance with the Code is 14 feet; however, the proposed structure is 21 feet in height.
12. Due to the elevation and tree line in the front of the property, neither the house nor the structure can be seen from the street.
13. As a condition of approval, the Applicant agreed to remove another accessory building which was located in the front yard of the property.
14. No neighbors testified in favor of the application.
15. No neighbors testified against the application.
16. After considering the evidence and testimony at the hearing, the Board voted 4-0 to approve the application.

CONCLUSIONS OF LAW

1. The Applicant requests a variance pursuant to Section 165-23 of the Code to locate a 20' x 20' accessory structure within the front yard of the property, which is proposed to be 21 feet high.

2. In accordance with Section 165-23, an accessory building height shall be a maximum of 14 ft, not exceeding one story and shall be located in the rear quarter of the lot.

3. The standard to determine whether to grant a dimensional variance as outlined by the Pennsylvania Supreme Court is that the Applicant must show that unnecessary hardship will result if a variance is denied and that the proposed use will not be contrary to public interest. Hertzberg v. Zoning Bd. of Pittsburgh, 554 Pa. 249, 721 A.2d 43 (1998); citing, Allegheny West Civic Council, Inc. v. Zoning Bd. of Adjustment of the City of Pittsburgh, 547 Pa. 163, 167, 689 A.2d 225, 227 (1997).

4. Although the language of Hertzberg is expansive, the current trend is to apply the relaxed standard for dimensional variances only to the consideration of whether unnecessary hardship results from unique physical characteristics or conditions of the land. The Friendship Preservation Group, Inc. v. Zoning Hearing Board of Adjustment of the City of Pittsburgh, 808 A.2d 327 (Pa. Cmwlth. 2002); Cardamone v. Whitpain Township Zoning Hearing Board, 771 A.2d 103 (Pa. Cmwlth. 2001).

5. The findings that the Board must make, where relevant, in granting a variance as set forth in the Municipalities Planning Code are as follows:

- a. That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape,

or exceptional topographical or other physical conditions peculiar to the particular property and that the unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of the zoning ordinance in the neighborhood or district in which the property is located.

b. That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning ordinance and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.

c. That such unnecessary hardship has not been created by the Applicant.

d. That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare.

e. That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.

6. Here, the Applicant is requesting permission to locate a 20'x 20' shed, with a proposed height of 21', in the front yard of the property.

7. Applicant testified that, the requested relief is the least necessary because the property is an irregularly shaped lot with lines that are not perpendicular to each other. Additionally, the topography of the property is uneven with varying elevations.

8. The Board found that the criteria for granting a variance were met and that the relief granted was the minimum variance that will afford the relief requested.

ORDER OF THE UPPER MERION TOWNSHIP

ZONING HEARING BOARD

IT IS HEREBY ORDERED AND DECREED that the Board finds that the Applicant presented sufficient testimony to grant a variance to Section 165-23. The variance is granted conditioned upon the Applicant's compliance with the testimony of the Applicant at the public hearing on December 19, 2012.

Decision Dated: December 19, 2012

**UPPER MERION TOWNSHIP
ZONING HEARING BOARD**

Robert J. Montemayor - Chairman

Brad Murphy – Vice Chairman

William J. Clements

John Tallman

NOTE TO APPLICANT:

There is a thirty (30) day period after the date of a decision for an aggrieved person to file an appeal in the Court of Common Pleas of Montgomery County to contest an approval or denial by the Zoning Hearing Board. If the Applicant has been granted Zoning Hearing Board approval, the Applicant may take action on said approval during the thirty (30) day appeal period; however, the Applicant will do so at his or her own risk. If the Applicant has received Zoning Hearing Board approval, the Applicant must secure all applicable permits from Upper Merion Township within one (1) year of the date of the approval or the decision granting approval.